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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1513

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO; CHARLINE J. BIRKINS, individually and as Director of the COLORADO STATE DIVISION OF PUBLIC WELFARE; KEITH D. McBURNEY, ERNEST J. BLOEDORN, MANUEL DIAZ, JOHN L. HALEY, JAMES A. HENDERSON, M.D., GAIL F. OUREN, HENRY J. TUPPER, WILLIE E. ANTHONY, JAMES H. VINCENT, individually and as constituting the COLORADO STATE BOARD OF SOCIAL SERVICES; and MELVIN POBANZ, individually and as Director of the EL PASO COUNTY DEPARTMENT OF PUBLIC WELFARE,

Petitioners,

vs.

ASCENSION VIALPANDO for herself and her minor child, SABRINA VIALPANDO, and both on behalf of all others similarly situated,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Colorado

Brief of the State of California Amicus Curiae, in Support of Petition

Joined in by the States of Arizona, Connecticut, Illinois, Nebraska

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Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Colorado

Brief of the State of California Amicus Curiae, in Support of Petition

Joined in by the States of Arizona, Connecticut, Illinois, Nebraska

The State of California, as amicus curiae, respectfully supports the petition of Con F. Shea, Executive Director of the Department of Social Services of the State of Colorado, and his copetitioners, praying that a Writ of Certiorari issue to the United States Court of Appeals for the Tenth

Circuit. For Opinions Below, Jurisdiction, Questions Presented, Constitutional and Statutory Provisions involved and Statement of the case, see the petition.

The State of California is joined as amicus curiae by the States of Arizona, Connecticut, Illinois and Nebraska.

STATEMENT OF THE INTEREST OF THE STATE OF CALIFORNIA

The State of California participates in the Aid to Families with Dependent Children Program (hereinafter "AFDC"). Sections 11200 through 11488 of the California Welfare and Institutions Code. The relationship between the federal government and the States in programs established under the Social Security Act requires participating States to conform to federal requirements as a condition of continued receipt of federal funds. *King v. Smith,* 392 U.S. 309, 316-317 (1968); *Rosado v. Wyman,* 397 U.S. 397, 407-409 (1970); *Jefferson v. Hackney,* 406 U.S. 535 (1972).

The federal law to which the States must conform is set forth in the Social Security Act of 1935. 42 U.S.C. 301, et seq. The regulations interpreting the Social Security Act are set forth in 45 C.F.R. 201, et seq. The Department of Health, Education and Welfare also publishes a handbook further interpreting the Act and regulations. That handbook is entitled the Handbook of Public Assistance Aministration.

The AFDC program established by the Social Security Act of 1935 has been amended from time to time (see 42 U.S.C. 601 through 644). As part of the 1962 amendments, section 402(a)(7) was added to the Social Security Act to be effective July 1, 1963 (42 U.S.C. 602(a)(7)).[1] 45 C.F.R.

1. The legislative history of the 1962 amendments is set forth in Senate Report No. 1589, June 14, 1962, and is published in United States Code, Congressional and Administrative News, 87th Congress--Second Session 1962 at pages 1943-1983.

233.20 contains the federal regulations interpreting the amendment. This addition required that as a condition to the continued receipt of federal grants, each of the various States participating in the AFDC program must have a State plan which provides ". . . that the State agency shall, in determining need, take into consideration . . . any expenses reasonably atributable to the earning of . . . income; . . ." 42 U.S.C. 602(a)(7).

During the 1971 Legislative Session, the California Legislature adopted a comprehensive Welfare Reform Act entitled the Welfare Reform Act of 1971 (Chapter 578, California Statutes, 1971). Section 28.1 of that act added section 11451.6 to the Welfare and Institutions Code to be effective October 1, 1971. It provides as follows:

> "Notwithstanding Section 11008, any exemptions from earned income for work-related expenses authorized under other provisions of this chapter shall be limited to a standard allowance of fifty dollars ($50) per month plus reasonable and necessary costs of child care. For purposes of this section, reasonable costs of child care are defined as actual costs, not to exceed the costs of securing child care available in the community which meets the minimum standards of the Federal Inter-agency Day Care Agreement of Section 107 of Public Law 90-222 (Economic Opportunity Act amendments of 1967)."
> (See Appendix A hereto)

On October 1, 1971, section 11451.6 of the Welfare and Institutions Code became effective and controled the content of the work-related expense component of the California Plan for AFDC and became the operative legislative enactment by which California complied with section 42 U.S.C. 602(a)(7).

The Director of Social Welfare adopted regulations EAS 44-113, et seq. and distributed them as required by law to be effective October 1, 1971 (see Appendix C hereto). These regulations implement section 11451.6 of the Welfare and Institutions Code. These regulations repeal those regulations by which county welfare departments formerly determined the work-related expense component of AFDC entitlements prior to the Welfare Reform Act. Regulations EAS 44-113.2 and 44-114 are set forth in Appendix D.

On October 1, 1971, the Director of Social Welfare requested the views of the Department of Health, Education and Welfare as to whether any provision of federal law precluded a standard allowance for work-related expenses. (Telegram dated October 1, 1971, set forth in Appendix B-1 hereto.) On October 4, 1971, the Regional Commissioner replied by telegram advising the Director that a standard allowance for work-related expenses is permissible for purposes of simple and efficient administration. (Telephone transcription of the telegram is set forth in Appendix B-2 hereto.)

It was the intent of the California Legislature that effective October 1, 1971, the computation of the work-related expense component in determining AFDC entitlements was to be governed by section 11451.6 of the California Welfare and Institutions Code.

The California Plan for computing AFDC entitlements by the use of the standard allowance for work-related expenses authorized by section 11451.6 includes the following process to determine net income:

> Assuming a family with earned income of $480.00 per month from full-time work with actual child care expenses of $100 per month:

1. Determine earned income (assumed)	$480.00
2. Subtract $30, plus ⅓ of the remainder as work incentive exemption	—30.00
	$450.00
	—150.00
	$300.00
3. Determine work-related expenses:	
Standard deduction	$ 50.00
Actual child care costs (assumed)	100.00
Work-related expense exemption	$150.00
	$300.00
	—150.00
Net Income	$150.00

Using this financial information for this hypothetical family, its "net income" would be $150. This figure would be used in other steps for purposes of determining an AFDC entitlement to determine the amount of payment the family would be entitled to receive. See *Villa v. Hall,* 6 Cal.3d 227 (1971); vacated and remanded, 406 U.S. 965; 7 Cal.3d 926 (1972).

Under these circumstances this hypothetical family would have a total work-incentive exemption of $330.00 [$30.00 + $150.00 (⅓ of the remainder) + $150.00 (work-related expenses = $330)].

At issue in this proceeding is the Federal Law relating to that portion of the calculation involving work-related expenses, exclusive of child care. In California as in Colorado a standard deduction was created to determine them. Its use in the formula for determining an AFDC entitlement is illustrated by the above example. No other element of the formula is at issue in this case.

Prior to the adoption of section 11451.6 of the California Welfare and Institutions Code, the amount to be applied to the above formula for work-related expenses depended upon an individual calculation for each family member earning

income that may vary each month. An amount was derived for each employed family member by the application of complex regulations. The amount to be deducted depended upon the circumstances of each case. Set forth in Appendix D are the regulations that governed these individual calculations.

On September 22, 1971, a class action was commenced in the Superior Court of California for Sacramento County in which the prayer for relief is that the court declare that section 11451.6 of the Welfare and Institutions Code and regulations adopted pursuant thereto to be in violation of the Social Security Act and denial of equal protection to respondents and their class. That case is entitled *Conover v. Hall.*

On the same date, the Superior Court issued an *ex parte* order entitled "Temporary Restraining Order and Order to Show Cause" which prohibited the respondents from the implementation of section 11451.6 of the California Welfare and Institutions Code.

On October 8, 1971, the trial court issued its opinion on request for issuance of preliminary injunction and notice of court ruling granting respondents' request for a preliminary injunction on the ground that section 11451.6 of the California Welfare and Institutions Code violated section 402(a)(7) of the Social Security Act (42 U.S.C. 602 (a)(7)). On the same day, the trial court issued its preliminary injunction.

On November 13, 1972, the Court of Appeal filed its opinion reversing the order of the trial court granting the Preliminary Injunction finding that section 11451.6 is not in conflict with 42 U.S.C. 602(a)(7). A Petition for Hearing was filed in the California Supreme Court by plaintiffs in that action and hearing was granted on January 17, 1973.

Minutes, California Supreme Court, 8 Cal. 3d (1) A copy of the opinion of the Court of Appeal is set forth as Appendix G (*Conover v. Hall,* 28 Cal. App. 3d 676 (Nov. 1972)).

Argument has not yet been scheduled by the California Supreme Court.

The adoption of section 11451.6 of the California Welfare and Institutions Code and the pendency of *Conover v. Hall* in the California courts upon the issue of whether the standard allowance created by section 11451.6 is in conflict with the Social Security Act gives the State of California a paramount interest in the determination by this court on the Petition for Certiorari filed in this action. California supports the Petition.

ARGUMENT

I. The Secretary of Health, Education and Welfare, the Person Charged with Administering the Social Security Act, Has Interpreted That Act to Permit States to Utilize a Standard Allowance for Work Expenses When Based Upon a Statistical Average.

California supports the arguments made by Petitioner that the Secretary of Health, Education and Welfare has consistently interpreted the Social Security Act to allow the States to utilize a standard allowance in determining work expenses. The Petitioner points out that the Colorado plan utilizing a standard allowance for work expenses exclusive of mandatory payroll deductions and child care costs was approved by the Secretary. Petition page 7.

While the Secretary has not approved the standard allowance set forth in section 11451.6 of the California Welfare and Institutions Code (Appendix A) and its implementing Regulations (Appendix C), the regional adminis-

trator expressed their approvability by a telegram dated October 4, 1971.[2]

The Regional Commissioner left open an approval as to the *amount* of the standard allowance but indicated a standard allowance for work expenses is permissible if properly substantiated.[3]

The acts of the Secretary in approving the Colorado plan and of the Regional Administrator in indicating the California plan is approvable is consistent with the earliest administrative interpretation given the Social Security Act by the Secretary. Section 402(a)(7) was added to the Social Security Act by the 1962 amendments. 42 U.S.C. 602(a)(7). Part IV of the Handbook of Public Assistance Administration at section 3140 was applicable to work expenses. Prior to the 1962 addition to the Social Security Act requiring that work expenses be considered rather than merely permitting their consideration,[4] a consolidated standard allowance was permitted for food, clothing and

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2. The telegram from the Regional Administrator was in response to the telegram from the California Director of Social Welfare dated October 1, 1971. The telegrams are set forth in the Appendix at B-1 and B-2 respectively.

3. The Regional Commissioner is the appropriate person to interpret State plan amendments on the basis of policy statements or precedents previously approved by the Administrator of the Social Security Act. 45 C.F.R. 201.3(a)-(c). The administrative interpretation placed upon the Social Security Act by HEW is clearly stated as interpreting 42 U.S.C. 602(a)(7) to allow standardization of work expenses. See brief filed *Adams v. Parham* (Civil Action No. 16041) in the United States District Court, Northern District of Georgia, Atlanta Division. A copy is appended hereto as appendix E. As the HEW amicus brief points out, the interpretation of 42 U.S.C. 602(a)(7) to permit standard allowances was in existence on September 26, 1969. Appendix E page 16.

4. See Senate Report No. 1589, June 14, 1962, published in the United States Code, Congressional and Administrative News, 87th Congress—Second Session, 1962, pages 1943-1983, at pages 1959-1960, indicating that the 1962 amendments would *require* the consideration of work expenses rather than *permit* their consideration.

incidentals. The 1957 version of the section is set forth in the appendix to the Petition at E-1. Section 3140 was amended to reflect the 1962 amendments to the Social Security Act and mandated the consideration of work expenses. Appendix to Petition at F-3. Yet elements of work expenses were still permitted to be consolidated and standardized:

"INTERPRETATION

"The provision for the consideration of expenses of earning income was included in the law to insure that all States will recognize work expenses in determining net income. Also, if work expenses are not considered by a State agency in its plan material, it has the effect of failing to provide an incentive for working since that portion of the family income spent for work expenses has the effect of reducing the amount available for food, clothing, and shelter.

Increased food necessitated by greater activity, along with the additional clothing and its care, and better grooming necessitated in holding a job, *may be standardized* as accepted, common needs of all employed persons. Therefore, to simplify administration, a State public assistance agency may establish a reasonable money amount to represent the combined additional cost of these three items—food, clothing, and personal incidentals—for all employed persons. The State agency should be in a position to support the reasonableness of any money amount established for these items within the general framework of its assistance standards and its knowledge and experience with respect to work expenses of recipients. This method is acceptable, whether the items of work expenses are included in a State's standard for requirements, or whether the agency uses the method of deduction of work expenses from earned income in arriving at the individual's net income from his employment.

"Items of work expenses must be allowed when there is determination that such expenses do, in fact, exist in the individual case. On the basis of a finding of the existence of expenses related to employment, money amounts for such expenses must be added to the individual's needs or deducted from his earned income in such a way as to assure that no duplication of items will exist."

(Appendix to Petition at F-2 and F-3) (Italics in original)

The California Plan included the standard allowance suggested by the revised section 3140. EAS 44-113.232. Appendix F hereto. *County of Alameda v. Carleson,* 5 Cal. 3d 730 (1971); appeal dismissed 406 U.S. 913 (1972).[5]

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5. In *County of Alameda v. Carleson, supra,* the standard allowance of EAS 44-113.232 was attacked by a county charging that it was improper as it granted a deduction for expenses that may not have been incurred and hence in violation of the Social Security Act. *County of Alameda v. Carleson, supra,* at 747. The regulations were held not to violate the Social Security Act and its implementing regulations. *County of Alameda v. Carleson, supra,* at 748. In dealing with the standard allowance the California Supreme Court commented in this language:

". . . Congress might well have concluded that the administrative costs of attempting to determine or review the reasonableness of any particular work-related expenditure outweighed the cost to the AFDC program of permitting the occasional deduction of excess expenses.[20]"

"[20]The foregoing reasoning would also sustain Carleson's standard monthly allowance for increase personal expenses attributable to employment. The administrative convenience afforded by a standard allowance in a reasonable amount provides justification for deviating from the general principle that only those expenses actually incurred may be deducted from income. (See *Rosado v. Wyman, supra,* 397 U.S. 397, 419 [25 L.Ed.2d 442, 459]; *Amos v. Engelman* (D.C.N.J. 1970) [C.C.H. Pov.L.Rptr., par. 11,983]; HEW Handbook of Public Assistance Administration, Part IV, § 3140.)"

The appeal taken from this decision was dismissed by this court as lacking a substantial Federal question. 406 U.S. 913. However, the standard allowance for work expenses was not involved in that appeal. In the Jurisdictional Statement dated December 15, 1971, filed by the County of Alameda, the following appears in footnote 1 at page 11:

As part of the decision to incorporate handbook material into regulation form, section 3140 of the handbook was repealed by handbook transmittal No. 149 dated March 18, 1969 (page 2, Appendix F hereto). The amicus curiae brief of the Department of Health, Education and Welfare in *Adams v. Parham* U.S. Dist. Ct., Northern District of Georgia, Atlanta Division, Civil Action No. 16041, points out that only mandatory provisions of the handbook were incorporated into regulation form. Appendix E at page 16 hereto. However, the Department of Health, Education and Welfare continued to interpret the Act to authorize the states to adopt a standard allowance for expenses. On September 26, 1969, the Department found it necessary to instruct the states on how to deal with the 1969 amendments to the Act in section 402(a)(8), 42 U.S.C. 602(a)(8)(ii). In so instructing the states the use of a standard allowance for work expenses was harmonized with these new provisions and appropriate instructions given. (Appendix 6 to Petition at G-2; Appendix E hereto at 16)

It is clear that even after section 3140 of the Handbook was repealed, the Department of Health, Education and

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Note 5, cont'd:

"1. In the Superior Court, appellants also urged that federal income tax withheld either not be allowed as a deduction, or that the income tax refunds be considered income—rather than personal property—upon receipt. Carleson has recently adopted this position in his new regulations, and no issue concerning his point is now presented. *In addition, in the Superior Court appellants urged that Carleson's standard deduction for work-related food expenses, clothing, and incidental expenses was contrary to federal law, in that those deductions were allowed regardless of a showing that the expenditures were actually made. Carleson has eliminated this deduction in his recent regulations, and in any case, it is now clear that a standard deduction for expenses is not per se illegal. Amos v. Engelman* (D.C.N.J. 1970), CCH Pov. L. Rptr., ¶ 11983, aff'd sub nom. *Engelman v. Amos*, November 9, 1971, 40 U.S. Law Week 3216." (Emphasis added.)

It is clear that the County of Alameda did not contend to this Court that the California Supreme Court improperly validated the standard allowance set forth in Regulation EAS 44-113.232.

Welfare is instructing the states on how to deal with a standard allowance for work expenses.

There can be no other conclusion but that, as stated in the Petition to this Court, since 1957 the Department of Health, Education and Welfare has consistently interpreted the Social Security Act to permit the consideration of work expenses by a standard allowance so long as that standard is based upon a fair averaging process and it consolidates all reasonably attributable expenses. Petition, page 11. The policy behind such an interpretation is expressed by the Department of Health, Education and Welfare in the brief filed in *Adams v. Parham,* Appendix E hereto, at 14-15:

> "Welfare agency workers have thus been freed from time-consuming, detailed determination of need and payment. Computation and payment processes have been automated to a degree not otherwise possible. The chances of error have been reduced. Recipients of assistance have gained greater certainty of the amount of the payment to which they are entitled. Need and payment actions have become more objective, with less room for play of subjective judgment by the agency worker. The agencies have been enabled to separate their income maintenance and social services functions, and to use income maintenance specialists, with suitable skills, under a new system that operates more efficiently and expeditiously. The statutory objectives of administrative efficiency and a uniform Statewide program in accordance with 42 U.S.C. 602 (a)(2) and (5) have been furthered."
>
> "In this context, the individualization of work expenses of recipients is an anachronism. This method involves all of the problems which as just described, are being overcome in regard to other aspects of the determination of need and payment. Payroll deductions vary with the amount of wages, and wages vary with the number of paydays in a month, the number of days the recipient worked, overtime, and many

other factors. Other work expense items, such as transportation and lunches, vary similarly with the number of days of work and the other factors which affect payroll deductions, and in addition they may vary according to any number of still other factors under an individualized computation, the amount of work expenses for each individual would likely be different every month. For the agency to obtain an adequate accounting of the individualized expenses, to process the changing amounts, to validate and audit, places a severe burden on administration of the program. Increasingly, agencies have neither the staff nor the capability for such an operation."

The California Legislature in including a standard work expense allowance as part of its Welfare Reform sought to extend the advantages gained by the narrower standard allowance approved by the California Supreme Court in *County of Alameda v. Carleson,* 5 Cal. 3d 730, *supra.* Such action would bring to California Welfare Administration the advantages outlined by the Department of Health, Education and Welfare in its Amicus Brief in *Adams v. Parham, supra* (Appendix E hereto).

Such action is consistent with the Social Security Act as interpreted by the Department of Health, Education and Welfare.

II. A Uniform Standard Allowance for Work Expenses Is to Be Distinguished from a Maximum Allowance for Such Expenses.

The Court of Appeals finds that a standard allowance for work expenses is equivalent to a maximum allowance when an individual's expenses exceed the standard allowance. The court states:

"The problem with the Colorado system is not its use of a standardized allowance but the intransigent adherence to this standard when a particular family's expenses of employment exceed the allowance. In such

cases, Colorado's standard allowance operates as a maximum allowance which we also consider to be inconsistent with 42 U.S.C. § 602(a)(7). Williford v. Laupheimer, E.D. Penn., 311 F. Supp. 720 (three-judge court). Nevertheless, a reasonable interpretation of the statute permits "a state to use a standard deduction for [employment] expenses in the interest of efficient administration of the [AFDC] program, *provided the allowance is adequate to cover all actual expenses.*" Amos v. Engleman, D.N.J., 333 F. Supp. 1109, 1119 (three-judge court), *modified on other grounds,* 404 U.S. 23. (Emphasis added.)"

Vialpando v. Shea, Appendix A to Petition for Certiorari p. A-6-7.

The distinction between the two techniques seems obvious. When a maximum is imposed, the individualized determination is made, but a fiscal limit is placed upon the absolute amount of expenses any individual may include in the grant determination. A standard allowance consolidates and averages work expenses across the universe of all families with work expenses. The result will be that each family will receive the average amount. While some families and individuals will be benefited and others will be affected adversely, all will receive an average amount and all will benefit from the savings which accrue from discontinuing the individualized determinations.[6]

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6. The Department of Health, Education and Welfare views it this way:

"HEW does not view the use of maximums as acceptable under 42 U.S.C. 602(a)(7). They do not operate like averages. A maximum adversely affects individuals with higher expenses, but in contrast to an average it does not benefit individuals with lower expenses. Moreover, the use of actual expenses on an individualized basis if below the maximum means that the administrative advantages of using an average are not obtained. A maximum, of course, bears no relationship and does not purport to bear any relationship to the actual expenses incurred. It merely establishes an arbitrary

The Court of Appeals refers to *Williford v. Laupheimer*, 311 Fed.Supp. 720 (E.D.Pa. 1969). That case dealt with Regulation 3234.1 of the Pennsylvania Department of Public Welfare which provided that a maximum deduction of fifty dollars will be allowed for work-related expenses in computing income and the grant allowance for AFDC. *Williford v. Laupheimer, supra,* 721. The Court finds that the imposition of a maximum deduction violated section 402(a)(7) of the Social Security Act (42 U.S.C. 602(a)(7)). Pennsylvania's only justification for the maximum appeared to be economic. *Williford v. Laupheimer, supra,* 722. The *Williford* case stands only for the proposition that the imposition of a maximum amount in the allowance of work expenses is not permitted. The Colorado system of utilizing a statistically based standard allowance is not the imposition of a maximum.

The Court of Appeals finds that it "operates" as a maximum for the failure to include an allowance for those expenses which are in excess of the standard, citing *Amos v. Engelman,* 333 Fed.Supp. 1109 (Three Judge Court convened in District Court for the District of New Jersey, 1970) (modified on other grounds, 404 U.S. 23). The *Amos* case is not support for the conversion of a statistically based standard allowance into the imposition of an impermissible maximum upon the work expense allowance. That court permits the use of a $50.00 standard allowance for "business" expenses if the standard is correctly composed. That is, that court stated that the standard allowance

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Note 6, cont'd:

ceiling on the amount of expense which the State will recognize. A standard based on averaging, on the other hand, by definition must bear a reasonable relationship to actual expenses which can reasonably be expected to be incurred." Brief of the United States as amicus curiae to the Federal District Court in *Adams v. Parham,* United States District Court, Northern District of Georgia, Atlanta Division, Civil Action No. 16041 (Appendix E at page 20).

must cover all business expenses in its composition. *Amos v. Engelman, supra,* at 1119. What the court is saying in *Amos v. Engelman, supra,* is just what the Department of Health, Education and Welfare said in the Brief Amicus Curiae in *Adams v. Parham,* United States District Court, Northern District of Georgia, Atlanta Division, Civil Action No. 16041 (Appendix E attached). The Department of Health, Education and Welfare, as discussed in Part I, *supra,* has approved state plans containing a statistically supportable average allowance for work expenses. But the allowance must be statistically supportable. When the *Amos* court states ". . . provided the allowance is adequate to cover all actual expenses . . ." (*Amos v. Engelman, supra,* 1119), it is referring to the fact that the *standard* must be adequate. This is made quite clear by this language at page 1119:

> "There is nothing in this record to establish that $50 is an unreasonable amount for business expense or that the plaintiffs in this action or the persons they represent have incurred monthly business expenses in excess of $50. We do not consider that it is inconsistent with the statute for a state to use a standard deduction for business expenses in the interest of efficient administration of the program, provided the allowance is adequate to cover all actual expenses.
>
> In *Rosado,* when the Supreme Court invalidated New York's regulation recomputing need in a manner which reduced the level of benefits in violation of 402(a) (23) it also stated: "We do not, of course, hold that New York may not, consistently with the federal statutes, consolidate items [in computing need] on the basis of statistical averages". 397 U.S. at 419, 90 S.Ct. at 1221, 25 L.Ed.2d 442. If a state may use statistical averages to determine the various components of need, it may also do so to compute business expenses.

> We therefore reject plaintiffs' contention on this point without precluding them from showing that the $50 deduction is unreasonable or inadequate."

The correct holding of *Amos v. Engelman, supra,* is that the Social Security Act does not prohibit the use of a standard deduction, but the *amount* utilized as a standard is to include all items of work expense in the development of the standard; hence the plaintiffs in that case are not precluded from showing that the standard did not include all items in its development. If such is the case, the standard allowance would then be "unreasonable or inadequate." *Amos v. Engelman, supra,* at 1119.

Amos v. Engelman, supra, does not support the proposition that a statistically based average for work expenses is converted into a maximum allowance because it applies the standard to all families including those with greater individual expenses as well as those with lesser expenses.

The construction that the Colorado allowance is a maximum is neither factually correct nor is it legally correct. On this basis alone this Court should grant the Petition for a Writ of Certiorari sought by Petitioners. The decision, if left to stand, could be considered to construe section 11451.6 of the California Welfare and Institutions Code and similar state plans from other states to be considered a maximum allowance and hence not valid.

As stated earlier in *Williford v. Laupheimer, supra,* 311 Fed.Supp. 720 (1969), the court found the imposition of a maximum limit upon work related expenses by Pennsylvania to be invalid. To the same effect is a decision by the Court of Appeals for the second circuit holding that the exclusion of specific work expenses from consideration is not permissible. *Connecticut St. Dept. of Pub. W. v. Department of H., E. & W.,* 448 F.2d 209 (1971). These cases stand for the broad proposition that a State must consider

all items of work expense and cannot either exclude certain items or place an arbitrary fiscal limit upon their consideration. However, they do not otherwise deal with the manner by which all items are to be considered. The use of a statistical average to consider expenses by developing a standard allowance was neither before these courts nor is it inconsistent with these decisions. Moreover, this process has been approved by this Court as an appropriate tool for social security administrators (*Rosado v. Wyman,* 397 U.S. 397, 419 (1970)) and unless specifically prohibited by the Social Security Act, the discretion should be that of the States. See *Jefferson v. Hackney, supra,* 406 U.S. 535, 541 (1972).

This Court has specifically approved the use of consolidated statistically based standard allowances in Social Security Administration. *Rosado v. Wyman, supra,* at 419-420. While the factual base involved in *Rosado* was the New York need standard, the Court's comments on the use of statistical averages is not conceptually limited to that factual setting. It should be noted that the work expense calculation involves many items similar in nature to those which form the components of a need standard. The individual items required to be individually calculated under prior regulations include such things as food, clothing, transportation costs, union dues, various taxes, insurance and retirement benefits among others. See Rgulations EAS 44-113.23 and 44-114, Appendix D hereto. New York likewise computed the need standard on an individualized basis making individual calculations for food, clothing and other items identified as "special needs." *Rosado v. Wyman, supra,* at 416. A flat grant was established which made payments based upon the number of individuals in a household and special needs were consolidated into a $100.00 flat grant. *Rosado v. Wyman, supra,* at 416. At issue was com-

pliance with 42 U.S.C. 602(a)(23). This Court specifically held 42 U.S.C. 602(a)(23) does not prevent the use of statistical averaging to develop a flat grant for administrative efficiency. *Rosado v. Wyman, supra,* 397 U.S. 397, 417, 419-420. This Court was analyzing 42 U.S.C. 602(a)(23) to determine if that section prohibited the use of a statistically based flat grant. It found no prohibition in that section. The prohibition found in that section was that it prohibited the use of the flat grant as a guise to reduce the standard of need. *Rosado v. Wyman, supra,* at 419. This is precisely what the court said in *Amos v. Engelman,* supra, 333 Fed. Supp. 1109, 1119, and is precisely what the Department of Health, Education and Welfare is saying in its amicus brief to *Adams v. Parham,* Appendix E hereto. The use of a standard allowance cannot be used as a device to fail to take in account work expenses. That is, in developing the standard, all items must be included in the statistical base which are reasonably attributable to the earning of income. The exclusion of items from the work expense base is the same as the exclusion of items from the base under 42 U.S.C. 602(a)(23).[7]

If there remained any question, the most recent decision of this Court in the area of welfare grant computation should put the issue to rest. In *Jefferson v. Hackney, supra,* 406 U.S. 535, it is pointed out that in determining whether a State enactment is in conflict with the Social Security Act, the court will look to see if the State act violates any specific provision of the Social Security Act. If not, the State legislative decisions will not be interfered with. *Jef-*

7. The plan approval process of the Department of Health, Education and Welfare requires that the states justify the amount of the standard allowance to insure this principle is followed. See the amicus brief of the Department, Appendix E hereto, at pages 21-25. See also the telegram of the Regional Administrator commenting on the California Plan. Appendix B-2 hereto.

ferson v. Hackney, supra, 406 U.S. 535, at 541. This is in recognition that there may be more than one permissible way to achieve the goals of the Social Security Act. See *Jefferson v. Hackney, supra,* at 546.

No specific provision of the Social Security Act prohibits the use of a standard allowance in considering work expenses under section 402(a)(7) of the Social Security Act. 42 U.S.C. 602(a)(7). The option to utilize that method is given to the states by long-standing valid policy considerations of the Department of Health, Education and Welfare. The Court of Appeals incorrectly applied existing cases and the statutory history of the Social Security Act to find that a standard allowance for work expenses operates as a maximum upon the consideration of work expenses and is thus in violation of the Social Security Act.

III. The Construction Placed Upon the Social Security Act by the Opinions of the Lower Courts Seriously Hinders the Effective Administration of the Social Security Act as It Fails to Recognize That the States Have Placed Great Reliance on the Long-Standing Interpretation Given the Social Security Act by the Secretary and Its Plan Approval Under the Act.

The Petition to this Court argues that the interpretation given the Social Security Act by the opinions of the lower courts in this case and the decision of those courts that a standard alowance for work expenses violates the Social Security Act seriously hinders the effective administration of that act. The State of California supports that contention and the history of the California provision for work expences graphically illustrates the effect of reliance upon the Secretary's long-standing interpretation of the Social Security Act.

As discussed supra at pp. 5-6 and 10, California followed the lead of the Secretary in permitting a standard allowance for those items of work expenses denominated food, cloth-

ing and incidentals. State Regulation EAS 44-133.232 authorized such a standard allowance[8] pursuant to instructions set forth in the Federal Handbook at section 3140 (Appendix F to Petition for Certiorari before this court in this case). Recognizing the administrative in efficiency in the cumbersome determinations required by the complex set of Regulations applicable to determinations of other work expenses the California Legislature sought to extend the standard allowance concept to other work expense allowances. This section, 11451.6 of the California Welfare and Institutions Code, was adopted as part of a general Legislative Scheme to reform welfare administration and payments in California. Benefit increases were made to recipients by increasing some payment levels such as the maximum allowance under section 11450 of the California Welfare and Institutions Code for AFDC recipients. These increases were partly made possible because of simplified administration such as that sought in the use of a standard allowance for work expenses rather than the complex determinations required under the prior regulations. At the time the California Legislature was considering its Welfare Reform Act of 1971 it was aware that the Secretary had uniformly interpreted the Social Security Act to permit such standard allowances and uniformly approved plans which included such provisions for considering work expenses. See State Letter dated September 26, 1969, from the Assistance Payments Administration to all state agencies, Appendix G to the Petition to this Court in this case. The Secretary has power to initiate procedings to conform state plans to Federal Law under 45 C.F.R. 201.6 following the procedures set forth in 45 C.F.R. 213.1 through 213.33. While the Secretary initiated such proceedings against

8. This Regulation is set forth as Appendix D.

states which failed to include all items of work expenses in the allowance[9] it had not initiated such proceedings against states which included a properly statistically based allowance applied in a uniform manner.

The State of California recognizes the reluctance of this Court to become involved in detailed questions of Welfare Administration. As Justice Black noted, with the concur-

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9. Connecticut modified its State plan to exclude specific items of work expense from consideration.

> ". . . At the hearing, Connecticut stipulated that, aside from certain child care payments under AFDC, it deducted as work-related expenses only specified payroll deductions, i.e., withholding tax, social security tax, mandatory group life insurance premiums, mandatory retirement plan payments, mandatory union dues, Blue Cross and other hospital insurance for persons below 65 years of age. See Conn.Gen.Stat. § 17-2; I Connecticut Welfare Manual, Chpt. 3, § 332.32. Since the hearing, Connecticut has agreed to deduct transportation costs to and from work." *Connecticut St. Dept. of Pub. W. v. Department of H., E. & W.*, 448 Fed.2d 209, at 216 (2nd Cir., 1971).

A conformity proceeding was held. The court characterized the issue in that proceeding in this language:

> "The evidence presented at the administrative hearing showed that Connecticut *excludes such expenses as additional clothing necessary to employment, cost of better grooming and other personal incidentals, cost of tools, materials, special uniforms and transportation to call on customers.*" (Footnote omitted.) *Connecticut St. Dept. of Pub. W. v. Department of H., E. & W., supra,* at 217. (Emphasis added.)

The Court of Appeal affirmed the decision of the Department of Health, Education and Welfare.

> "Therefore, the Administrator's conclusion that Connecticut's limitation on the types of deductible work-related expenses is inconsistent with federal law is clearly supported by substantial evidence, and thus is conclusive. 10 42 U.S.C. § 1316(a)(4); Gardner v. Alabama Department of Pensions and Security, 385 F.2d 804 (5th Cir. 1967), cert. denied, 389 U.S. 1046, 88 S.Ct. 773, 19 L.Ed.2d 839 (1968). As we find that the regulation is a reasonable interpretation of the Act, we affirm the Secretary's order on the deductible work-related expense issue." (Footnote omitted.) *Connecticut St. Dept. of Pub. W. v. Department of H. E. & W., supra,* at 217.

rence of the Chief Justice, in the dissent to *Rosado v. Wyman*, 397 U.S. 397, at 431 (1970):

> "The Court today holds that the "District Court correctly exercised its discretion by proceeding to the merits" of petitioners' claim that the federal and state statutes are inconsistent. *Ante*, at 401. The Court reaches this conclusion despite the fact that the determination whether a State is following the federal AFDC requirements is clearly vested in the first instance not in the federal courts but in the Department of Health, Education, and Welfare (HEW); despite the fact that at the very moment the District Court was deciding the merits of petitioners' claim HEW was performing its statutory duty of reviewing the New York legislation to determine if it was at odds with § 402(a)(23); and despite the fact that if HEW had been given enough time to make a decision with regard to the New York legislation, its decision might have obviated the need for this and perhaps many other lawsuits. I regret that I cannot join an opinion which fails to give due consideration to the unmistakable intent of the Social Security Act to give HEW primary jurisdiction over these highly technical and difficult welfare questions, which affirms what is to me a clear abuse of discretion by the District Court, and which plunges this Court and other federal courts into an ever-increasing and unnecessary involvement in the administration of the Nation's categorical assistance programs administered by the States.[1] (footnote eliminated)"

These comments illustrate the dilemma which faces the states and this case in graphic terms for Colorado and for California identifies the results of choosing one horn of the dilemma rather than another. The question then posed is to what extent may a state rely upon a long-standing interpretation of the Social Security Act by the Secretary in fashioning its state plan and to what extent is plan approval by the Secretary meaningful to the States. It was not meaningful

to Colorado in this case. A similar fate appears possible for California's plan.

One of the more serious aspects of this case is the extent to which the primary jurisdiction to interpret and apply the Social Security Act will be recognized by the Federal and State Courts where claims of recipients that state action is not in conformity with Federal Law. If the opinion of the Court of Appeals is to stand, the Federal District Courts can expect additional attacks upon established interpretations of the Social Security Act by the Secretary.

This Court should reinforce its decisions which emphasize that the long-standing interpretations of the Social Security Act by the officers charged with its administration are to be given weight and deference. *Udall v. Tallman,* 380 U.S. 1 (1965); *Lewis v. Martin,* 397 U.S. 552, 559 (1970); *U.S. v. City of Chicago,* 400 U.S. 8 (1970).

That emphasis is necessary to assure the states that it can rely upon such actions by the Secretary as plan approval under 45 C.F.R. 201.3 and instructions such as those contained in the letter of September 26, 1969, to all state agencies (Appendix G to the Petition). The opinion of the lower courts in this case and the litigation that has occurred or is now in progress in this area of Social Security Administration[10] illustrates well that the lower courts failed to correctly apply the decisions establishing this principle.

Joining the State of California in this amicus curiae brief are the States of Arizona, Connecticut, Illinois and Nebraska.

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10. Some of the cases are set out in footnote 5 to the Petition.

Respectfully submitted,

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Appendix A

Section 11451.6 of the California Welfare and Institutions Code.

11451.6. Notwithstanding Section 11008, any exemptions from earned income for work-related expenses authorized under other provisions of this chapter shall be limited to a standard allowance of fifty dollars ($50) per month plus reasonable and necessary costs of child care. For purposes of this section, reasonable costs of child care are defined as actual costs, not to exceed the costs of securing child care available in the community which meets the minimum standards of the Federal Inter-agency Day Care Agreement of Section 107 of Public Law 90-222 (Economic Opportunity Act amendments of 1967).

Appendix B

1. Telegram from Robert B. Carleson, Director of Social Welfare, to Mr. Eugene Rubel, Assistant Administrator, Social & Rehabilitation Service, dated October 1, 1971.

October 1, 1971
TELEGRAM

Mr. Eugene Rubel
Assistant Administrator
Social & Rehabilitation Service
U. S. Department of Health, Education, and Welfare
330 Independence Avenue, S. W.
Washington, D. C. 20201

We are receiving inquiries as to whether the requirements of 42 U.S.C. 602(a)(7) and 45 C.F.R. 233.20(a)(3)(iv)(a) and 45 C.F.R. 233.20(a)(7)(1) would permit the State of California to develop a statewide standard allowance for all work-related expenses which would apply a flat sum for all work-related expenses against income in accordance with other requirements of federal law.

Would you advise me whether there is any provision of federal law which in the opinion of the Department of Health, Education and Welfare would preclude such a standard allowance.

ROBERT B. CARLESON
Director of Social Welfare

RBC:mc/bh

2. Telegram from Philip Schafer, Regional Commissioner, to Robert Carleson dated October 4, 1971.

REURTEL to Rubel 10-1-71, cited sections Social Security Act and HEW regulations requires state AFDC plan provide that state agency in determining need take into consideration any expenses reasonably attributable to earning

income. We interpret act and regulations to permit states, for purposes of simple and efficient administration, to establish justifiable standard allowance for all such expenses, not including child care, to be uniformally applied in all situations with earned income. State must substantiate that amount fixed as standard allowance covers all such personal and nonpersonal expenses reasonably attributable to earning income, for example, through factual study on adequate sample basis or from family living studies conducted by U. S. Bureau of Labor Statistics.

Philip Schafer
Regional Commissioner

Transcribed by telephone 10-4-71
cck

Appendix C

Excerpts from Regulation EAS 44-113 Applicable to Work Expenses Effective October 1, 1971.

44-113 NET INCOME (Continued)

.23 *Work Expenses—Definitions*

.231 *Personal Expenses*—Expenses which are common to all persons who have earned income (either as an employee or from self-employment). Such expenses include costs of child care, minimum amounts involuntarily withheld by the employer (i.e., income tax, social security, etc.), and transportation to and from the job.

.232 *Nonpersonal Expenses*—Expenses which are mandatory to retain a specific job (either as an employee or from self-employment). Such expenses include costs of transportation to call on customers, special tools, special material or clothing, and union dues.

233. *Business Expenses*—Expenses incurred in the production of income when self-employed.

.24 *Work Expenses—Amounts Allowable Per Month*

.241 All items listed in 44-113.23, *except child care and business expenses*—A standard deduction shall be allowed for these items according to the number of days worked during the month as follows:

1 through 10 days	$25.00
over 10 days	$50.00

.242 *Child Care*—The reasonable and necessary cost of obtaining such care shall be allowed when the county determines that adequate care for the recipient's children cannot be provided during

his working hours by nonworking persons in his household. However, the amount allowed shall not exceed the actual cost of securing such care through a day care facility meeting the standards outlined in Chapter 30-350 (Child Care Services) when the county determines that such a facility is available to the recipient.

.243 *Business Expenses*—The full cost of expenses which are incurred in the production of income. The recipient must bear the full burden of proof for justifying the existence of and need for any expense reimbursed under this classification.

.25 *Other Deductions from Net Income*

In addition to the deductions described above, deductions for other expenses of persons with income from any source, shall be made as follows:

Appendix D

Excerpts from Regulations EAS 44-113 and EAS 44-114 Applicable to Work Expenses in Effect Prior to October 1, 1971.

44-113 NET INCOME (Continued)

.23 *Expenses of Earnings—AFDC*

In order that the use of family income for necessary expenses to retain employment will not reduce the money available to meet basic and special needs, such expenses shall be deducted from nonexempt earnings as follows: (See Section 44-111.23 for exemption to be applied against earned income.)

.231 Involuntary deductions made by the employer over which the employee has no control.

.232 Expenses for additional food, clothing and personal incidentals, allowed as a standard allowance according to the number of working days employed during the months, as follows:

1 through 5 days	$ 6.00
6 through 10 days	$12.00
11 through 15 days	$18.00
Over 15 days	$25.00

.233 The actual cost of other expenses which are mandatory to retain employment. Examples are:

a. Transportation to and from the job and on the job if not reimbursed by the employer, subject to conditions and limitations in Section 44-114.

b. Tools and licenses.

c. Dues to unions or similar assessments which are a condition of employment.

d. Necessary job-related educational or training expenses.

e. Child care, when the caretaker is employed.

f. Special safety devices not furnished by the employer.

g. Telephone service required in connection with employment.

.234 Expenses of earnings do not include items often deducted at the request of the employee but not mandatory to retain employment. Examples are:

a. Credit union shares, savings bonds, voluntary retirement, or elective profit sharing programs.

b. Elective health insurance.

c. Charitable contributions.

d. Dues to organizations where membership is not a prerequisite to employment.

e. Deductions for payments on consumer and other loans (see Section 44-113.2 regarding garnishments, etc.

.235 When earnings are from self-employment or operation of a business, the expenses in Items .232 and .233 are deducted with all other normal items of expense incidental to receipt of the income. However, principal payments are not allowed except for tools and equipment essential to the employment.

44-114 DETERMINATION OF WORK RELATED TRANSPORTATION EXPENSES

Expense for transportation to be allowed in determining net income from earnings shall be related to the most feasible means available to the individual recipient, as determined by the county welfare department. Such factors as distance from the job, hours worked, availability and accessibility to public transportation, child care arrangements, and job requirements must be considered in making a decision concerning the most feasible means of transportation.

.1 *Transportation by Common Carrier*

Average monthly costs of transportation by common carrier shall be allowed as an expense of employment.

.2 *Transportation by Private Vehicle*

The cost of transportation by private vehicle shall be allowed when transportation by private vehicle is the most feasible means available. The amount allowed shall reimburse the recipient for actual costs of operating the vehicle and, if necessary, the purchase of an appropriate vehicle, subject to conditions and limits specified in Section 44-114.2 and not to exceed the overall maximum in Section 44-114.4.

.21 Basic operating and maintenance costs for gasoline, oil, normal lubrication, tires and minor repairs shall be the amount as shown on the chart in Section 44-114.221.

.211 *Monthly Operating and Maintenance Cost*

Miles traveled per month	Allowance at rate of 4 cents per mile
Less than 175	$ 6.00
175- 224	8.00
225- 274	10.00
275- 324	12.00
325- 374	14.00
375- 424	16.00
425- 474	18.00
475- 524	20.00
525- 574	22.00
575- 624	24.00
625- 674	26.00
675- 724	28.00
725- 774	30.00
775- 824	32.00
825- 874	34.00
875- 924	36.00
925- 974	38.00
975-1,024	40.00
	Add
For each additional 50 miles	$ 2.00

.22 Other esential costs shall be allowed:

.221 When transportation is an expense of employment, as a flat amount of $25 per month; or

.222 When transportation is a service-connected expense or a special need, either as a flat amount of $25 per month, or as actually needed up to a maximum of $25 per month proratable on a monthly basis to enable the actual cost to be met. The county shall determine the method of payment, taking into consideration the preference of the recipient, if feasible, and the practicality of repair in relation to the value of the vehicle or the cost of its replacement.

.223 For purposes of this section, examples of "other essential costs" are:

a. The cost of replacement of adequate battery, generator, brakes and other items essential to safe and practical operation, including full amount for cost of repairs when the cost of repairs during the month exceeds $5.

b. The cost of the vehicle registration and license fee.

c. The cost of premiums for minimum public liability and property damage insurance as required for the recipient or operator of the vehicle if other than the recipient.

d. The cost of parking lot fees.

.23 The cost of purchasing a vehicle shall be allowed subject to the following conditions:

.231 The total amount allowed for monthly or other payments on the purchase price of a vehicle, exclusive of the costs enumerated in 44-114.232, shall not exceed $770. This amount shall include the trade-in allowance for the vehicle being replaced.

.232 The amount allowed for the purchase of a vehicle, in addition to the purchase price, shall include the actual cost to the recipient of sales tax, transfer fees, contract service charges and initial insurance premium if required.

The county welfare department shall take appropriate action (a) to encourage recipients who must purchase a vehicle while in receipt of aid to do business with reputable dealers, and (b) to offer such recipients a written guide or counseling service on what to look for when buying a vehicle.

.3 *Transportation by Means Other Than Common Carrier or Own Vehicle*

Average monthly costs of transportation by means other than common carrier or own vehicle such as a car pool, relative or neighbor, shall be allowed as an expense of employment.

.4 *Maximum Allowance*

The total amount allowed for transportation, exclusive of operation and maintenance (Section 44-114.21) shall not exceed $75 per month.

.5 *Implementation*

.51 The provisions of Section 44-114 shall be implemented as soon as fiscally feasible after the effective date of the regulations and shall be fully operative for all cases with transportation expenses by not later than July 1, 1970.

.52 The dollar limitations in Sections 44-114.22, 44-114.231 and 44-114.4 shall not be applicable with respect to obligations and agreements incurred and made by any county welfare department with a recipient before the effective date of these regulations or their implementation by the county currently responsible for the payment of aid.

Appendix E

Brief of the United States as Amicus Curiae in Adams v. Parham, United States District Court, Northern District of Georgia, Atlanta Division, Civil Action No. 16041, and its Appendix A (letter from Stephen P. Simonds, Commissioner, Assistance Payments Administration, Department of Health, Education, and Welfare, to State Agencies Administering Approved Public Assistance Plans dated September 26, 1969) (excluding conversion tables).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 16041

Christine Adams, et al.
Plaintiffs,

vs.

T. M. Parham,
Defendant.

BRIEF OF THE UNITED STATES AS AMICUS CURIAE

This is an action challenging Georgia's method of implementing section 402(a)(7) of the Social Security Act, 42 U.S.C. 602(a)(7), under the State's program of Aid to Families with Dependent Children (AFDC), established pursuant to Title IV of the Act, 42 U.S.C. 601 *et seq.* 42 U.S.C. 602(a)(7) requires that in determining need for assistance under Title IV, a State must deduct from income ". . .any expenses reasonably attributable to the earning of any such income. . .".

Plaintiff Christine Adams is a former AFDC recipient who has become ineligible for assistance under the Georgia AFDC program as a result of the State's recently amended

policy on computing the amount of deductible work expenses. Prior to the amendment of this policy in December 1971, the Georgia AFDC plan provided that such deductions for any recipient would be determined by subtracting from total income a flat $25 amount plus mandatory payroll deductions[1] and child care or attendant expenses. Under this formula plaintiff Adams and her minor child were eligible for and received monthly AFDC benefits in the amount of $82. By virtue of her eligibility for these payments, plaintiff Adams and her child were also deemed eligible for medical assistance (Medicaid) furnished pursuant to Georgia's program established under Title XIX of the Social Security Act, 42 U.S.C. 1396 *et seq.* On December 1,[2] the State changed its policy regarding computation of work expenses by increasing the flat amount from $25 to $35 and by eliminating payroll deductions as a separate deductible category. The cost of child care remains a separately deductible work expense item under the Georgia program. In plaintiff Adams' case, the effect of this policy change was to decrease her work expense deduction; this decrease resulted in a net income figure which exceeded the State's standard of need and plaintiff and her child consequently became ineligible for continued AFDC and Medicaid benefits. Plaintiff Edith Abrams is an AFDC recipient whose grant for herself and her five minor children was reduced from $112 to $85 on December 1, 1971 as a result of the new Georgia work expense deduction policy. For reasons which are not entirely clear from her complaint, plaintiff Abrams' grant will be further reduced to $71 on February 1.

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1. Payroll deductions include such items as income tax deductions, OASDI contributions, and union dues.

2. This policy change has not been approved by HEW for reasons discussed below.

This case raises two main questions involving interpretation of Title IV of the Social Security Act: first, whether it is permissible for a State to use a flat amount for determining the work expenses required to be deducted under Title IV and, second, if so, whether the particular figure used by Georgia as its standard work expense deduction is acceptable under Title IV.

I. FOR PURPOSES OF DETERMINING THE AMOUNT OF WORK EXPENSES DEDUCTIBLE PURSUANT TO 42 U.S.C. 602(a)(7), HEW RECOGNIZES USE BY A STATE OF EITHER AN ITEMIZATION OF ACTUAL EXPENSES INCURRED BY EACH INDIVIDUAL OR A CONSOLIDATED AMOUNT WHICH FAIRLY REPRESENTS WORK EXPENSES ON AN AVERAGE BASIS.

42 U.S.C. 602(a)(7) requires that, in determining need for AFDC, a State must deduct from income ". . .any expenses reasonably attributable to the earning of any such income. . .". This section of the brief examines the question of whether, in principle, the States, in responding to the Federal statute and the Federal implementing regulations, may use flat amounts for work expenses, as HEW has advised, or whether they must determine the actual amount for each individual for each item of work expense each month. This inquiry should be distinguished from the question, which will be discussed separately below, as to which items of work expenses must be taken into account as reasonably attributable to the earning of income. We assume here that the State does take all pertinent items into account, whether it uses the flat amount method or the individualized computation method or a combination of the two methods. Also left for later, separate discussion is the question of what would constitute an adequate flat

amount in Georgia today. In short, we look here only to whether a flat amount may be used, assuming it is done fairly.

By way of background, over the past several years there have been intensive efforts to simplify and streamline the administration of the public assistance programs. In most States, the standards of assistance—which are used in determining the need of applicants and recipients, and the amount of the assistance payment, 45 CFR 233.20(a)(2)—have been restructured. The trend has been away from individualization and toward the use of a flat amount for a family of a given size. For instance, in some States different amounts for food for children of different ages have been replaced by a single amount for food. As another example, many special needs, i.e., items that are needed by some but not all families or individuals, have been discontinued and replaced by an equivalent increase in the average assistance payment to all families.

Welfare agency workers have thus been freed from time-consuming, detailed determinations of need and payment. Computation and payment processes have been automated to a degree not otherwise possible. The chances of error have been reduced. Recipients of assistance have gained greater certainty of the amount of the payment to which they are entitled. Need and payment actions have become more objective, with less room for play of subjective judgment by the agency worker. The agencies have been enabled to separate their income maintenance and social services functions, and to use income maintenance specialists, with suitable skills, under a new system that operates more efficiently and expeditiously. The statutory objectives of administrative efficiency and a uniform Statewide program in accordance with 42 U.S.C. 602(a)(2) and (5) have been furthered.

In this context, the individualization of work expenses of recipients is an anachronism. This method involves all of the problems which, as just described, are being overcome in regard to other aspects of the determination of need and payment. Payroll deductions vary with the amount of wages, and wages vary with the number of paydays in a month, the number of days the recipient worked, overtime, and many other factors. Other work expense items, such as transportation and lunches, vary similarly with the number of days of work and the other factors which affect payroll deductions, and in addition they may vary according to any number of still other factors. Under an individualized computation, the amount of work expenses for each individual would likely be different every month. For the agency to obtain an adequate accounting of the individualized expenses, to process the changing amounts, to validate and audit, places a severe burden on administration of the program. Increasingly, agencies have neither the staff nor the capability for such an operation.

HEW has accordingly permitted the States to use flat amounts for work expenses. In an evolving situation, where States are at different places in reconstructing their need determination and payment procedures, they have been allowed a choice of methods. They may individualize work expenses. They may use a flat amount for specific items of work expenses, or for groups of items, or for all items.

The Social Security Act and the implementing HEW regulations are silent as to the method to be used. They neither require nor prohibit any particular method. However, the provisions of the Handbook of Public Assistance Administration, which preceded the regulations, stated:

> "Increased food necessitated by greater activity, along with the additional clothing and its care, and better grooming necessitated in holding a job, may be standardized as accepted, common needs of all employed

persons. Therefore, to simplify administration, a State public assistance agency may establish a reasonable money amount to represent the combined additional costs of these three items—food, clothing, and personal incidentals—for all employed persons. The State agency should be in a position to support the reasonableness of any money amount established for these items within the general framework of its assistance standards and its knowledge and experience with respect to work expenses of recipients. . . ." Handbook of Public Assistance Administration, IV-3140.1.

These Handbook provisions, not being mandatory, were not included in the regulations, and were vacated. Nevertheless, the option of using flat amounts was known to all of the States and HEW has continued to permit it. While the Handbook spoke specifically to food, clothing, and personal incidentals, States have been permitted to use flat amounts for other items, or for all items. The principle is the same whatever the item or items. If considerations of proper and efficient program administration can allow for use of flat amounts in any case or for any item, then the extension of the method to other items or to all items does not raise any different issue. The only question then is one of reasonableness of the size of the flat amount in relation to the items covered, which will be discussed separately below.

A letter from HEW to all State agencies on September 26, 1969, after the regulations on work expenses had been issued, clearly reflects the HEW position and advice that States may use a flat amount for all work expenses. HEW provided tables to assist the States in applying the mandatory disregard of $30 plus ⅓ of the remainder of an AFDC family's earned income pursuant to 42 U.S.C. 602(a)(8). States were further informed of how the tables could be adapted to account also for work expenses if the

State used a flat amount for all work expenses. The example given on page 1 of the State letter, set forth as Appendix A to this brief, is

> "A situation where a State agency has an established standard of $50 per month for all mandatory payroll expenses and all occupational expenses."

The propriety of using flat amounts under the neutral language of the Social Security Act has been clearly established by the U. S. Supreme Court in *Rosado v. Wyman*, 397 U.S. 397 (1970). That case involved the requirement under section 402(a)(23) of the Social Security Act that States must make a cost-of-living adjustment of their standards of assistance. As already suggested, the items in a State's standard of assistance are usually even more numerous and varied than the items of work expense. Moreover, New York had consolidated its standards, changing from individualized computations to flat amounts, and eliminating certain special needs. The effect was similar to using a flat amount for work expenses instead of making individualized determinations.[3] The Court concluded that New York had in fact impermissibly lowered its standards of assistance by eliminating items of need without corresponding adjustments in the new flat amounts. However, the Court's opinion carefully pointed out that the principle of consolidation and averaging was completely acceptable:

> ". . . . We do not, of course, hold that New York may not, consistently with the federal statutes, consolidate

3. To use a hypothetical example, suppose that a State recognized the special need of a handicapped person for an attendant. If the cost were $200 per month and one individual in 100 needed an attendant, this special need could be eliminated and replaced by adding $2 per month to the standard of assistance for all individuals. Thereafter, the one individual needing an attendant and the 99 individuals who do not need an attendant would each receive $2 per month. This is certainly a much more extreme form of averaging than is likely in respect to work expenses.

items on the basis of statistical averages. Obviously such averaging may affect some families adversely and benefit others. Moreover, it is conceivable that the net payout, assuming no change in the level of benefits, may be somewhat less under a streamlined program. Providing all factors in the old equation are accounted for and fairly priced and providing the consolidation on a statistical basis reflects a fair averaging, a State may, of course, consistently with § 402 redefine its method for determining need. A State may, moreover, as we have noted, accommodate any increases in its standard by reason of 'cost-of-living' factors to its budget by reducing its level of benefits. What is at the heart of this dispute is the elimination of special grants in the New York program, not the system of maximum grants based on average age. Lest there be uncertainty we also reiterate that New York is not foreclosed from accounting for basic and recurring items of need formerly subsumed in the special grant category by an averaging system like that adopted in the 1968 New York City experiment with cyclical grants." 397 U.S. 397, at 419.

This analysis applies with equal cogency to consolidation and averaging of work expenses. The result will be that some individuals and families will be benefited, and others affected adversely. Items of great expense for some individuals and no expense for others will be covered by an average amount for all. But if all the items are accounted for and fairly priced and the averaging is fair, the consolidation is acceptable. The individual plaintiffs in the present case may be among those affected adversely, but if the process is fair for the universe of individuals with work expenses, taken as a whole, the teaching of *Rosado* is that the method and its results must be upheld.

The several cases in district courts dealing with work expenses confirm this conclusion. The only Federal district court decision, dealing with the acceptability of an average

work expense deduction seems to approve the use of that method for calculating work deductions. In *Amos v. Engelman,* CCH Pov. L. Rep. ¶ 11,983 (D.N.J. 1970), aff'd. per curiam, 92 S. Ct. 181 (November 17, 1971), a three-judge Federal court upheld New Jersey's provision for a flat $50 work expense allowance.[4] Noting that nothing in the record indicated that the $50 figure was unreasonable or insufficient to cover plaintiffs' actual work expenses, the court stated:

> ". . . We do not consider that it is inconsistent with the statute for a state to use a standard deduction for business expenses in the interest of efficient administration of the program, provided the allowance is adequate to cover all actual expenses."

Citing *Rosado,* the court analogized averaging to determine a need standard with averaging to ascertain the work deduction figure and found that:

> ". . . If a state may use statistical averages to determine the various components of need, it may also do so to compute business expenses."

Plaintiffs have cited *Williford v. Laupheimer,* 311 F. Supp. 720 (E.D. Penn. 1969), as authority for the proposition that the only method of treating work deductions which comports with Title IV is the method of deducting actual expenses as incurred. We submit, however, that the decision in that case does not hold that use of a flat average amount is unacceptable. In *Williford,* the court considered Pennsylvania's policy as applying a maximum limit to the amount of work expense deductions, without discussing the permissibility of use of a flat amount designed to cover all actual expenses. The court invalidated Pennsylvania's pol-

4. New Jersey did not include either mandatory payroll deductions or child care costs in the $50 figure; those items were deducted separately and apparently on the basis of actual expenses.

icy on the grounds that it was inconsistent with 42 U.S.C. 602(a)(7), because it applied an arbitrary limitation on the deductibility of expenses contrary to the statutory provision that any expenses reasonably related to employment be deducted.[5]

HEW does not view the use of maximums as acceptable under 42 U.S.C. 602(a)(7). They do not operate like averages. A maximum adversely affects individuals with higher expenses, but in contrast to an average it does not benefit individuals with lower expenses. Moreover, the use of actual expenses on an individualized basis if below the maximum means that the administrative advantages of using an average are not obtained. A maximum, of course, bears no relationship and does not purport to bear any relationship to the actual expenses incurred. It merely establishes an arbitrary ceiling on the amount of expense which the State will recognize. A standard based on averaging, on the other hand, by definition must bear a reasonable relationship to actual expenses which can reasonably be expected to be incurred. Thus, the *Laupheimer* holding is not at odds with *Engelman* nor with HEW policy.

Likewise, the holding in *Michigan Welfare Rights Organization v. Houston,* Civil Action No. 35429, (E.D. Mich. April 30, 1971) is not inconsistent with *Engelman* nor with HEW policy. That case, like *Williford,* also involved a maximum. Moreover, under the court's order, the State was required to implement a specific modification of its policy accepted by HEW. Under this resolution of the case, Michigan recognized income taxes and social security taxes on an individualized basis and also used a flat amount of $40 per month for other work expenses. Thus, Michigan

5. Pennsylvania in that case had reduced the $120.40 amount plaintiff had spent for transportation and child-care to a $50 maximum deduction.

replaced its former maximum with a flat amount, representing an average allowance for work expenses other than payroll deductions. As resolved, the case clearly supports the use of flat amounts for work expenses.

Other cases cited by plaintiffs are patently distinguishable. *Olsen v. Child,* CCH Pov. L. Rep. ¶ 13,201, held that child care expenses could not be omitted from consideration. *Connecticut State Dept. of Public Walfare v. HEW,* 448 F. 2d 209 (2 Cir. 1971), held that certain other expense items had been omitted. However, these results do not go to the acceptability of use of flat amounts for work expenses, provided all items are considered.

In sum, the use of flat amounts for work expenses is consistent with the Social Security Act, the HEW regulations, the decided cases, State practice, and current developments to improve the administration of the public assistance programs.

II. FOR HEW APPROVAL, A FLAT AMOUNT FOR WORK EXPENSES MUST REPRESENT A FAIR AVERAGING OF THE AMOUNTS INCURRED BY INDIVIDUALS FOR THE PERTINENT ITEMS.

Applying the *Rosado* rule to work expenses, a flat amount may be used if all pertinent items are accounted for, if they are fairly priced, and if the consolidation on a statistical basis reflects a fair averaging. This section of the brief examines these conditions in the context of Georgia's policy which is at issue in the present case.

Georgia has a flat amount of $35 for all items of work expense other than child care. This amount, then, must, in the words of 42 U.S.C. 602(a)(7), cover "any expenses reasonably attributable" to the earning of income (other than costs of child care which Georgia considers separately). What, specifically, are these items? The Social Security Act is not specific. The HEW regulations which

directly reflect the statute merely repeat the statutory words. Thus, 45 CFR 233.20(a)(3)(iv)(a) requires that a State plan must

> "Provide that, in determining the availability of income and resources, the following will not be included as income:
>
> (a) Income equal to expenses reasonably attributable to the earning of income; . . ."[6]

The legislative history of the work expense provision is no more precise. However, in the course of defining "earned income," the HEW regulations give some examples which are pertinent here.

> "With reference to commissions, wages, or salary, the term 'earned income' means the total amount, irrespective of personal expenses, such as income-tax deductions, lunches, and transportation to and from work, and irrespective of expenses of employment which are not personal, such as the cost of tools, materials, special uniforms, or transportation to call on customers." 45 CFR 233.20(a)(6)(iv).

In general, States must consider at least those items of work expense which are referred to in the definition of "earned income" in the HEW regulations. States must also consider other mandatory payroll deductions, e.g., social

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6. In prescribing a method for disregarding earned income, e.g., the provision in 42 U.S.C. 602(a)(8) for disregard of $30 plus ⅓ of the remainder of a family's earned income per month, the HEW regulations specify that the disregard is to be applied to gross income," and all work expenses, personal and non-personal, will then be deducted." 45 CFR 233.20(a)(7)(i). Under earlier rules, certain work expenses were deducted from gross income, applicable disregards were then deducted, and then other work expenses were deducted. The current regulation emphasizes that disregards are deducted first, then all work expenses are deducted. The use of the word "all" at this point is not intended to change in any way the provision in the statute and elsewhere in the regulations (see 45 CFR 233.20(a)(3)(iv)(a)) that the work expenses to be considered are "any expenses reasonably attributable" to the earning of income.

security tax deductions and mandatory deductions for union dues. States are given latitude on considering other items. For instance, a State may also choose to cover additional costs of food, clothing and personal incidentals, which are referred to in the superseded Handbook provision, quoted above, and which partially overlap the mandatory "lunches" item in the current HEW regulation on "earned income," also quoted above. In dealing with items of this type, there is room for difference of opinion as to whether they are "reasonably attributable" to the earning of income, or whether they represent an individual's choice of how to spend additional income. Accordingly, HEW has strongly recommended incluson of these items but has not prescribed a hard-and-fast rule, and has thus permitted the State to determine to what extent to include them.

Even where an item must clearly be considered a work expense, States have been given a degree of latitude. Costs of transportation to and from work must be considered. But if an individual, without undue inconvenience, can take a bus to work, the State may consider the bus fare, and need not consider the individual's actual costs in driving his automobile or taking a taxi.[7] Similarly, if a State does consider the individual's costs in driving his own automobile, the State need not include the full amount of the individual's installment payments for purchase of the automobile, as the complaint in this case suggests. Again, here, HEW considers these limitations, if imposed by the State, to be consistent with proper consideration of "any expenses reasonably attributable" to the earning of income.

---

7. The question of whether bus transportation is available is an example of the kind of determination that must be made by the agency worker on a case-by-case basis. Use of a flat amount saves staff time, avoids subjective judgments, and simplifies program administration.

Accordingly, as a starting point in justifying its flat amount of $35 for work expenses other than child care, Georgia must identify exactly what items of work expense are being covered, and on what basis, within the Federal rules just described.

Once the items have been identified, the much harder job is to show that they have been fairly priced and fairly averaged. The averaging itself may be quite intricate mathematically, but it can be accomplished readily by those who have the requisite competence, provided the data are available on how many individuals had what work expense at what monthly cost. The real problem is to gather the data.

For the agency to conduct an interview in depth with each recipient who works, and thus determine the exact work expenses, and repeat this process over many months to reflect seasonal variations, would yield accurate information, but would be wasteful of time, staff and money. Statistical sampling techniques can yield sufficiently valid results that the State already has information in its case records, the sampling can be facilitated by using the case records rather than interviews. Nevertheless, under current HEW practice, a State that wishes to use a flat amount must validate it by accepted techniques of one kind or another.

The Georgia situation is complicated by the fact that, prior to its present policy, the State considered mandatory payroll deductions on an individualized basis, and allowed a flat amount of $25 for all other work expenses (other than child care). It is not clear whether plaintiffs also attack Georgia's former policy (which was approved by HEW). If both the plaintiffs and the State now accept the $25 amount as adequate for the items it covered, it would

only be necessary for purposes of this case, to determine the flat amount which represents the average monthly mandatory payroll deduction and add this amount to the $25. This could be done by analysis of a suitable sample of the case records for an appropriate recent period or periods.

If, however, the State's former policy is also being challenged, it is necessary to ascertain current costs of work expense items other than child care. This could be done by interviewing a cross-section of cases. Alternatively, the State could analyze a sample of its case records for periods prior to May 1969 when the State recognized work expenses on an individualized basis. The costs thereby determined would of course have to be updated to reflect increases in cost levels since the period surveyed. HEW has advised the State that its entire flat amount of $35 must now be justified, notwithstanding the prior HEW approval of the flat amount of $25 plus payroll deductions. This accords with current HEW practice.

In conclusion, HEW submits that the use of flat amounts for work expenses is clearly permissible. However, the amount used must be supported by vigorous justification on an adequate objective basis. Pending such justification, the current Georgia policy of allowing a $35 flat amount per month for all work expenses other than child care has been neither approved nor disapproved by HEW.

JOHN W. STOKES, JR.
United States Attorney
JULIAN LONGLEY
Assistant United States Attorney

Attorneys
For the United States of America
as Amicus Curiae

Department of Health, Education, and Welfare

[Letterhead]

Social and Rehabilitation Service
Washington, D.C. 20201

SRS-APA-PS

September 26, 1969

TO STATE AGENCIES ADMINISTERING
APPROVED PUBLIC ASSISTANCE PLANS

Subject: Conversion Tables for the Application of the Disregard of the First $30 and ⅓ of the Remainder of the Gross Income of AFDC Family

The attached Conversion Tables have been developed for your optional use in cooperation with the National Center for Social Statistics and staff of several Regional Offices as a tool for applying the disregards mandated in Section 402(a)(8)(A)(ii) of the Social Security Act and SRS Program Regulation 20-7 Section 233.20(a) 11 (ii)(b).

Tables have been devised according to weekly, (Column 1), by-weekly, (Column 2), semi-monthly, (Column 3) and monthly (Column 4) pay periods, whichever is appropriate for the individual cases. The monetary amounts are expressed as gross earnings.

Column 5 represents the amount remaining after the application of the disregard of the first $30 and ⅓ of the remainder. These amounts have been rounded for $.50 (fifty cents) and over to the nearest dollar. For State agencies which have objectively and equitably identified a standard amount for expenses reasonably attributable to employment, the tables may be further adjusted as demonstrated below.

For example: In a situation where a State agency has an established standard of $50 per month for all mandatory payroll expenses and all occupational expenses,

the attached tables for such a State agency could be adapted to read as follows:

Conversion Tables of Gross Earnings by Frequency of Pay Period. The Application of the Disregard of the First $30 and ⅓ Remainder of AFDC Family Gross Income and Deduction of State Standard of Expenses Reasonably Attributable to the Earnings of One Wage Earner.*

(1) Weekly	(2) Bi-Weekly	(3) Semi-Monthly	(4) Monthly	(5) Net Amount Remaining Less $30 and ⅓ and Expenses of One Wage Earner
Up to:	Up to:	Up to:	Up to:	
24.06-24.40	48.12-48.80	52.13-52.87	104.25-105.74	0
24.41-24.74	48.81-49.49	52.88-53.62	105.75-107.24	1.00
24.75-25.09	49.50-50.19	53.69-54.37	107.25-108.74	2.00
25.10-25.44	50.20-50.88	54.38-55.12	108.75-110.24	3.00
25.45-25.78	50.89-51.57	55.13-55.87	110.25-111.74	4.00

Methodology for application of the mandated disregard in AFDC (AFDC family eligible in accordance with Section 402(a)(8)(D) of the Social Security Act.)

1. If State agency has opted to disregard not more than $5 a month per recipient of any income, deduct this designated amount.
2. Disregard all the earned income of any dependent child who is a full or part-time student who is not a full-time employee.
3. From the remaining gross income of the AFDC family apply the disregard of the first $30 and ⅓ of the remainder.
4. From the remaining amount in 3 above, subtract expenses reasonably attributable to the earning of income for each wage earner (excepting those expenses attributable to the earnings of a dependent child whose income is disregarded in accordance with 2 above).

(*For each additional wage earner, deduct amount designated by State agency.)

5. If State agency has opted to provide for conservation of income for future identifiable needs of a child, deduct the applicable amounts.
6. The remainder from 4 and 5 above, whichever is applicable, plus all other available income is subtracted from the amount used by the State to determine need and the amount of the assistance payment.

Determination or redetermination of eligibility for AFDC family who has not been receiving AFDC for any one of the four months preceding the month of the determination.

1. The total AFDC family income, earned and unearned, less only the expenses reasonably attributable to earning of income for each wage earner is to be applied to the appropriate amount used by the State to determine need.
2. If there is a budget deficit without the application of any of the disregards and conservations (that is the disregard of student earned income, first 30 and ⅓ remainder, setting aside for future needs of a child, and the disregard of up to $5 per recipient of any income—Sections 402(a)(8)A (i) & (ii), 402 (a)(8) B (i) & (ii) of the Social Security Act, respectively) then the method as identified in the above is applicable.
3. If there is no budget deficit, that is the total AFDC family income exceeds the appropriate amount used by the State to determine need, the family is not eligible.

Sincerely,

/s/ STEPHEN P. SIMONDS
Stephen P. Simonds
Commissioner

Appendix F

Letter from Stephen P. Simonds, Commissioner, Assistance Payments Administration, Department of Health, Education, and Welfare, to State Agencies Administering Approved Public Assistance Plans dated March 18, 1969.

Department of Health, Education, and Welfare
[Letterhead]
Social and Rehabilitation Service
Washington, D.C. 20201

In Reply Refer to:
SRS-APA-PC
March 18, 1969

Handbook Transmittal No. 149

TO STATE AGENCIES ADMINISTERING APPROVED PUBLIC ASSISTANCE PLANS

From: /s/ STEPHEN P. SIMONDS
Stephen P. Simonds, Commissioner

Subject: Policy Material-Revised and Obsolete—Handbook of Public Assistance Administration

Material Transmitted	*Material Superseded*
Table of Contents IV-3000-3999	IV-3000
	IV-3424
Information Sheets	IV-3460
	IV-5235
	IV-8300
	V-3320

BACKGROUND AND EXPLANATION

Many policies formerly issued in the Handbook of Public Assistance have been revised and published in the Code of Federal Regulations. Where Handbook policies are inconsistent with a regulation, the regulation governs. Since much of the official policy remains in the Handbook, the sections that have been amended, revised, or obsoleted are indicated below. Those sections not amended by the new regulations continue to have full force and effect.

1. *Application, Determination of Eligibility and Furnishing Assistance*—IV-2000.
   The recently published regulation—Simplified Method for Determination of Eligibility—PA Programs-relates to IV-2000. (See *Federal Register* 45 CFR 205.20, dated January 24, 1969 or SRS Program Regulation 10-3.)
2. *Need*—IV-3000-3199.23-p. 2, is obsolete. This policy has been revised and published as a regulation. (See *Federal Register,* 45 CFR 233.20, dated January 29, 1969 or SRS Program Regulation 20-7.)
3. *Deprivation of Parental Support or Care*—IV-3410
   The regulation published August 8, 1968, 45 CFR 203.1, relates to IV-3410.
4. *Dependent Children of Unemployed Fathers*—IV-3424-3424.42, is obsolete. This policy has been revised and published as a regulation. (See *Federal Register,* 45 CFR 233.100, dated January 24, 1969 or SRS Program Regulation 20-3.)
5. *AFDC-Foster Care*—IV-3453-3454.21
   The Regulation 45 CFR 233.110, amends IV-3453 and IV-3454 and makes foster care mandatory. (See *Federal Register,* dated January 28, 1969 or SRS Program Regulation 20-6.)
6. *Community Work and Training*—IV-3460-3465
   This provision was obsoleted by P.L. 90-248. (See *Federal Register,* 45 CFR 233.140, dated January 1, 1969 or SRS Program Regulation 20-1.)
7. *Social Services*—IV-4000
   The policy relating to services in AFDC has been revised and published as a regulation. (See *Federal Register,* 45 CFR 220, dated January 28, 1969 or SRS Program Regulation 30-1.) This policy remains in effect with respect to the Adult Categories until revised.
8. *Protective and Vendor Payments for AFDC*—IV-5235-5235.4-p. 2, is obsolete. This policy has been revised and published as a regulation. (See *Federal Register,* 45 CFR 234.60, dated January 28, 1969 or SRS Program Regulation 20-5.)

9. *Fair Hearing: Legal Services; Continuing Assistance* —IV-6000-6500, is amended. (See *Federal Register,* 45 CFR 205.10, dated January 24, 1969 or SRS Program Regulation 10-2.)
10. *Locating Absent Parents*—AFDC—IV 8300 is obsolete. (See *Federal Register,* 45 CFR 220.48, dated January 28, 1969 or SRS Program Regulation 30-1.)
11. *Recipient Count*—V-3300-3320-p. 2
    This has been revised and published in the *Federal Register.* (See *Federal Register,* 45 CFR 237.50, dated January 17, 1969 or SRS Program Regulation 20-2.)

EFFECTIVE DATES

Check the *Federal Register* indicated for the effective dates of the above mentioned changes.

INSTRUCTIONS FOR HANDBOOK MAINTENANCE

a. In Part IV:
   1. With pen and ink, make the following notation on pages 2000 and 2600:
      "See *Federal Register,* 45 CFR 205.20, dated January 24, 1969 or SRS Program Regulation 10-3."
   2. Remove Table of Contents IV-3000 and 3000 thru 3199.23-p.2. Insert Table of Contents IV-3000 and sheet 3000-3199.23-p.2.
   3. With pen and ink, make the following notation on pages 3410-3412:
      "See *Federal Register,* 45 CFR 203.1, dated August 8, 1968."
   4. Remove Table of Contents and pages 3424 thru 3424.3-p.2. Insert enclosed sheet for Part IV, pages 3424-3424.3-p.2.
   5. With pen and ink, make the following notation on pages 3450 and 3453 and 3453-p.5, item 3454.1:
      "This section is amended. See *Federal Register,* 45 CFR 233.100, dated January 28, 1969 or SRS Program Regulation 20-6."

6. Remove Table of Contents and pages 3460 thru 3465-p.2. Insert enclosed sheet for Part IV, pages 3460-3465-p.2.
7. With pen and ink, make the following notation on page 4000:
   "This policy does not apply to AFDC. See *Federal Register,* 45 CFR 220, dated January 28, 1969 or SRS Program Regulation 30-1."
8. Remove Table of Contents IV-5235 thru pages 5235.4-p.2. Insert enclosed sheet for Part IV-5235-5235.4-p.2.
9. With pen and ink, make the following notation on pages 5514-p.2, item 2 C and 6000:
   "This section is amended. See *Federal Register,* 45 CFR 205.10, dated January 24, 1969 or SRS Program Regulation 10-2."
10. Remove pages 8300 thru 8330-p.2. Insert the enclosed sheet for IV-8300.

b. In Part V:
   Remove pages 3300 thru 3320-p.2. Insert sheet for Part V, pages 3300-3320-p.2. At top of page 3320-p.3, with pen and ink mark out "3320, Recipient Count (continued)" and all of item d.

c. Make appropriate notation on the Form, Record of Receipt of Handbook Transmittals.

Appendix G

Opinion of the Court of Appeal of the State of California in Conover v. Hall, 28 Cal. App. 3d 676; hearing granted by California Supreme Court January 17, 1973.

[Civ. No. 13289. Third Dist. Nov. 13, 1972.]

SALLY LEE CONOVER et al., Plaintiffs and Respondents, v. JAMES M. HALL, as Secretary, etc., et al., Defendants and Appellants.

SUMMARY

Recipients of aid under the federal Aid to Families with Dependent Children (AFDC) program brought a class action to declare Welf. & Inst. Code, § 11451.6, a part of the state's participation in that program establishing a standard allowance for all work-related expenses exclusive of child care costs, to be in violation of the federal Social Security Act and a denial of equal protection requirements. The trial Court issued a preliminary injunction restraining enforcement of the statute. (Superior Court of Sacramento County, No. 215815, William M. Gallagher, Judge.)

The Court of Appeal reversed. Characterizing the involved federal statute, 42 U.S.C. § 602(a)(7), as ambiguous with respect to the question whether the states may set up a standard for purposes of administrative ease, the court interpreted it as not requiring participating states to deduct all work-related expenses in determining financial need, and concluded that Welf. & Inst. Code, § 11451.6, insofar as it sets up a statewide standard exclusive of child care costs, comports to federal law. Accordingly, the court reversed the order granting the preliminary injunction. (Opinion by Regan, J., with Richardson, P. J., and Coakley, J.,* concurring.)

*Retired Associate Justice of the Court of Appeal sitting under assignment by the Chairman of the Judicial Council.

COUNSEL

Evelle J. Younger, Attorney General, and N. Eugene Hill, Deputy Attorney General, for Defendants and Appellants. Daniel S. Brunner, Valerie Vanaman, Philip Goar, Clifford Sweet, F. Hayden Curry, Ralph Santiago Abascal and Daniel Brunner for Plaintiffs and Respondents.

OPINION

REGAN, J.—Plaintiffs are recipients of Aid to Families with Dependent Children (hereafter "AFDC").[1] On September 22, 1971, plaintiffs commenced a class action in which they sought to have the court declare section 11451.6 of the Welfare and Institutions Code to be in violation of the federal Social Security Act and a denial of equal protection to plaintiffs and members of their class. After various proceedings in the trial court, the court issued a preliminary injunction restraining the defendants from enforcing the provisions of section 11451.6 of the Welfare and Institutions Code.[2] The preliminary injunction issued without a requirement that plaintiffs post a bond or undertaking to secure defendants against damage.

Defendants appeal.

FACTS

The State of California participates in the AFDC program. (Welf. & Inst. Code, § 11200 et seq.) The purpose of the program is set forth in the federal law: "For the purpose of encouraging the care of dependent children in their

1. AFDC is funded by the federal and state governments pursuant to the Social Security Act of 1935. (42 U.S.C. § 601 et seq.; see *Rosado v. Wyman* (1970) 397 U.S. 397 [25 L.Ed.2d 442, 453-454, 90 S.Ct. 1207].) The AFDC program is implemented in California by the Welfare and Institutions Code (§ 11200 et seq.).

2. In its written opinion, the trial court concluded that the state law and implementing regulations conflict with the federal law and thus are invalid.

own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children." (42 U.S.C. § 601.)

States are not required to participate in the AFDC program. However, once a state chooses to join it and take advantage of the substantial federal funds available, the state must comply with the mandatory requirements established by the Social Security Act as interpreted and implemented by the United States Department of Health, Education and Welfare (hereafter "HEW"). (*King v. Smith* (1968) 392 U.S. 309 [20 L.Ed.2d 1118, 1125-1126, 88 S.Ct. 2128]; *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 738-739 [97 Cal.Rptr. 385, 488 P.2d 953]; see 45 C.F.R. 233.20; Handbook of Public Assistance Administration (Dept. HEW).) (1) However, the states have considerable latitude in allocating their AFDC resources, since each state is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program. (*King v. Smith, supra,* 20 L.Ed.2d at p. 1126; *Dandridge v. Williams* (1970) 397 U.S. 471 [25 L.Ed. 2d 491, 498-499, 90 S.Ct. 1153].)

As a condition to the continued receipt of federal funds, each of the various states participating in the AFDC program must have a state plan which provides "that the State agency shall, in determining need, take into consideration . . . any expenses reasonably attributable to the earning of . . . income. . . ." (42 U.S.C. § 602(a)(7).)[3]

On August 13, 1971, the Welfare Reform Act of 1971 (Stats. 1971, ch. 578) became law. Section 28.1 of that act added section 11451.6 to the Welfare and Institutions Code (operative October 1, 1971). It provides as follows: "Notwithstanding Section 11008 [determination of recipient's income], any exemption from earned income for work-related expenses authorized under other provisions of this chapter shall be limited to a standard allowance of fifty dollars ($50) per month plus reasonable and necessary costs of child care. For purposes of this section, reasonable costs of child care are defined as actual costs, not to exceed the costs of securing child care available in the community which meets the minimum standards of the Federal Interagency Day Care Agreement of Section 107 of Public Law 90-222 (Economic Opportunity Act amendments of 1967.)"[4]

Prior to October 1, 1971, recipients of AFDC work supplements were allowed the full amount of their work-related expenses subject only to a limitation for personal items such as clothes and lunches. These expenses included such

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3. A portion of the congressional committee's report reads: "[I]f these work expenses are not considered in determining need, they have the effect of providing a disincentive to working since that portion of the family budget spent for work expenses has the effect of reducing the amount available for food, clothing, and shelter. The bill has, therefore, added a provision in all assistance titles requiring the States to give consideration to any expenses reasonably attributable to the earning of income." (1962 U.S. Code Cong. and Admin. News, p. 1960.)

4. Regulations were also adopted by the Department of Social Welfare to implement this section.

items as transportation costs, federal withholding, income tax, state disability insurance, social security, retirement contributions, union dues, and the $25 standard deduction for food, clothing and miscellaneous. (See Beilensen and Agram, *The Welfare Reform Act of 1971,* 3 Pacific L.J. 475, 483-484.) The amount to be deducted depended upon the circumstances of each case.

On October 1, 1971, defendant, Director Carleson, sent the following telegram to Mr. Rubel of HEW in Washington, D.C.: "We are receiving inquiries as to whether the requirements of 42 U.S.C. 602(a)(7)(i) and 45 C.F.R. 233.20(a)(3)(iv)(a) and 45 C.F.R. 233.20(a)(7)(i) would permit the State of California to develop a statewide standard allowance for all work-related expenses which would apply a flat sum for all work-related expenses against income in accordance with other requirements of federal law.

"Would you advise me whether there is any provision of federal law which in the opinion of the Department of Health, Education and Welfare would preclude such a standard allowance."

A telephone transcription of the telegram from the Regional Commissioner received on October 4, 1971, reads as follows: "REURTEL to Rubel 10-1-71, cited sections Social Security Act and HEW regulations requires state AFDC plan provide that state agency in determining need take into consideration any expenses reasonably attributable to earning income. We interpret act and regulations to permit states, for purposes of simple and efficient administration, to establish justifiable standard allowance for all such expenses, not including child care, to be uniformally applied in all situations with earned income. State must substantiate that amount fixed as standard allowance covers all such personal and nonpersonal expenses reasonably attributable to earning income, for example, through factual

study on adequate sample basis or from family living studies conducted by U.S. Bureau of Labor Statistics."[5]

The federal scheme for determining the financial need for AFDC of a child and working parent, as set forth in the law (42 U.S.C. § 602(a)(8)(A)(ii)), requires that the first $30 plus one-third of the remainder of the gross monthly earnings be considered exempt. In computing AFDC entitlements under section 11451.6 of the Welfare and Institutions Code, by a "standard allowance" for work-related expenses, the following procedure would be used:

Gross Monthly Earnings (assumed)		$ 480.00
Less $30.00		-30.00
		$ 450.00
And one-third		-150.00
		$ 300.00
Less: Child care (assumed)	$100.00	
Standard allowance	50.00	
	$150.00	$-150.00
Net Income		$ 150.00

The figure representing net or nonexempt income is then used for purposes of AFDC grant determination. (In general, see, 3 Pacific L.J., *supra,* at pp. 483-484.)

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5. In their brief, defendants contend: "While the telegram from Philip Schafer stated that the *amount* of the standard established for work-related expenses must be substantiated as an allowance to cover all such personal and non-personal expenses reasonably attributable to earning income, no issue exists as to validity of the *amount* of the standard established by the Legislature. The issue framed by respondents' complaint is limited to the right of the Legislature to determine work-related expenses by the use of a standard allowance of any amount. . . . The validity of the *amount* of the standard allowance is not before any court at this time."

At issue in this appeal is that portion of work-related expense calculation employing the $50 standard allowance[6] for work-related expenses, exclusive of child care, as provided for in section 11451.6.

Plaintiff filed declarations of AFDC recipients in the trial court to the effect that their work-related expenses exceeded $50 per month and that they would suffer irreparable harm if the standard allowance is applied. Plaintiffs contend the result of the implementation of the standard allowance would be to seriously reduce or terminate AFDC benefits to a substantial number of working parents.

The trial court in its opinion on request for issuance of a preliminary injunction stated, in part, as follows: "It appears to this Court that the Congressional requirement that consideration be given to 'any expense reasonably attributable to the earning of such income' (42 U.S.C. § 602 (a)(7)) precludes a fifty dollar ($50.00) maximum absent some provision to permit allowance of expense in excess of the fifty dollars in the individual case where properly substantiated. It therefore appears to the Court that § 28.1 of the Welfare Reform Act of 1971 [Welf. & Inst. Code, § 11451.6] and the implementing regulation (Def. #C) adopted September 29, 1971 are invalid."

The court granted the preliminary injunction and this appeal followed.

Conformity with Federal Law.

Defendants contend that section 11451.6 does not contravene the Social Security Act and is a valid method to take work-related expenses into account.

6. Plaintiffs refer to the limitation as a "maximum" on work-related expenses while defendants refer to it as a "standard allowance." The limitation does operate as a maximum for those recipients who incur work-related expenses *in excess of* $50. In this respect, counsel for defendants stated in the trial court that all applicants were to be credited with the $50, regardless of what their work-related expenses are.

Basically, the position of defendants can be summarized as follows: The pertinent section of the Social Security Act[7] does not require the subtraction of each individual's personal work-related expenses but leaves to the state the method by which a state is to consider them. They argue that the key words of the section are "take into consideration," and neither the act nor the implementing regulations prescribe any particular method or procedure. (See 45 C.F.R. 233.20(a)(3)(iv)(a); 45 C.F.R. 233.20 (a)(7) (i).) The California Supreme Court has previously approved a standard deduction for work-related food, clothing, and incidental expenses (*County of Alameda v. Carleson, supra,* 5 Cal.3d at p. 748, fn. 20),[8] and the Legislature has chosen to extend the standard to all work-related expenses for ease of administration and to reduce costs by eliminating individual calculation of each family's expenses.[9]

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7. 42 U.S.C. § 602(a)(7), sets forth that portion of the act relating to work-related expenses. It reads: "(a) A State plan for aid and services to needy families with children must . . . (7) . . . provide that the State agency shall, in determining need, take into consideration . . . any expenses reasonably attributable to the earning of any . . . income . . . ."

8. However, the court in that case also stated (at pp. 747-748): "The legislative history underlying the work-related expenses deduction provision indicates that it was the intent of Congress to permit the exclusion of *all* such expenses, without regard to the amount expended, provided that such expenses were reasonably related to employment."

9. In *Dandridge v. Williams, supra,* 397 U.S. 471, 487 [25 L.Ed. 2d 491, 503], the court rejected an equal protection attack upon a Maryland regulation placing a ceiling on monthly grants to large families under AFDC: "We do not decide today that the Maryland regulation is wise, that it best fulfills the relevant social and economic objectives that Maryland might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court."

Secondly, defendants contend that HEW interpreted the Social Security Act to permit a standard deduction for all work-related expenses except child care. (See Reply of Regional Commission to Carleson, set forth above; see also, 45 C.F.R. 201.3(c).) (2) The interpretation of the agency charged with the administration of the act is entitled to considerable weight. (*Rosado v. Wyman* (1970) 397 U.S. 397 [25 L.Ed.2d 442, 452, 457, 90 S.Ct. 1207].)

Defendants also argue the history of the HEW Handbook of Public Assistance Administration supports their position. Prior to March 18, 1969, section 3140, part IV, only permitted a standard allowance for work-related food, clothing and personal incidentals. However, on March 18, 1969, portions of the federal handbook were repealed and the provisions were carried into the regulations. The regulations adopted on the repeal of section 3140 of the handbook are silent upon the use of a standard allowance, and where federal regulatory language is neutral, uniform allowances have been approved. (*Id.* at p. 459 [25 L.Ed.2d]; see also *Amos v. Engleman* (D.N.J. 1970) 335 F.Supp. 1109, affd. per curiam 404 U.S. 23 [30 L.Ed.2d 143, 92 S.Ct. 181] [but on other grounds].)

Thirdly, defendants contend the trial court erroneously construed section 11451.6 to create a maximum allowance rather than a *standard* allowance. They concede that one court has found it impermissible to place a ceiling or maximum upon work-related expenses. (*Williford v. Laupheimer* (E.D.Pa. 1969) 311 F.Supp. 720.) The defendants find a distinction between the two techniques and argue as follows: "When a maximum is imposed, the individualized determination is made, but a fiscal limit is placed upon the absolute amount of expenses any individual may include in the grant determination. A standard allowance consolidates and averages work expenses across the universe of

all families. The result will be that some families and individuals will be benefited and others affected adversely as all will receive an average amount. . ."[10]

Plaintiffs, on the other hand, contend that section 11451.6 is invalid since it is in direct conflict with section 602(a)(7) of the Social Security Act and implementing federal regulations. (See 42 U.S.C. § 601; 45 C.F.R. 233.20(a)(7).) (3) While states are not required to participate in the AFDC program, they must comply with federal law in the administration of their program if they accept federal funds for this purpose. (*King v. Smith, supra; Rosad v. Wyman, supra.*)

Plaintiffs rely upon several federal district court cases to support their position. In *Williford v. Laupheimer, supra,* 311 F.Supp. 720, the court was faced with a state regulation that provided for a maximum of $50 for work-related expenses.[11] The court held that this was impermissible under section 602(a)(7) of the Social Security Act, stating (at p. 722): "We think it obvious that the fifty dollar limitation on income deductions is inconsistent with the express provisions of the Social Security Act. The im-

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10. In the brief of the United States as amicus curiae in *Adams v. Parham* (N.D.Ga. 1972) ..... F.Supp. ....., the matter is put thusly: "HEW does not view the use of maximums as acceptable under 42 U.S.C. 602(a)(7). They do not operate like averages. A maximum adversely affects individuals with higher expenses, but in contrast to an average it does not benefit individuals with lower expenses. Moreover, the use of actual expenses on an individualized basis if below the maximum means that the administrative advantages of using an average are not obtained. A maximum, of course, bears no relationship and does not purport to bear any relationship to the actual expenses incurred. It merely establishes an arbitrary ceiling on the amount of expense which the State will recognize. A standard based on averaging, on the other hand, by definition must bear a reasonable relationship to actual expenses which can reasonably be expected to be incurred."

11. This $50 limitation apparently included child care expenses. *Williford* is cited with approval in *County of Alameda v. Carleson, supra,* 5 Cal.3d at pp. 748-749.)

position of such a maximum deduction violates the clear Congressional directive that the states shall allow deductions for 'any expenses reasonably attributable to the earning of any such income.' The Commonwealth makes no claim that this limitation is inspired by any considerations other than an attempt to preserve and protect its coffers. And although we may sympathize with the state's attempt to alleviate the unquestionably and increasingly heavy burden of programs such as AFDC, the solution of such problems resides in Congress. To date, it has not seen fit to impose any limitation of work-related income deductions; the states are not free to do otherwise." (Accord, *Vialpando v. Shea* (D.C.Colo. 1972); ..... F.Supp. .....; *Adams v. Parham* (D.C.Ga. 1972); ..... F.Supp. .....; see also *Connecticut St. Dept. of Pub. W. v. Dept. of H., E. & W.* (2d Cir. 1971) 448 F.2d 209, 216-217; cf. *Amos v. Engelman, supra.*)

Plaintiffs also rely upon *County of Alameda v. Carleson, supra,* 5 Cal.3d 730. It is true that this decision seems to support plaintiffs' position. However, that case did not present the precise issue with which we are here faced. In *Alameda, supra,* certain counties brought an action against Carleson alleging, inter alia, that state welfare regulations authorized more generous deductions for work-related expenses than was allowable under federal law. The court upheld the state regulation, stating that it was the intent of Congress to permit the exclusion of all work-related expenses. (*Id.* at pp. 747-748.)

Finally, plaintiffs contend that the *Rosado* case, which discussed the permissibility of drawing a statistical average with regard to a standard of need (*Rosado v. Wyman, supra,* 25 L.Ed.2d at p. 459), is inapplicable to the instant case since the state provisions there did not involve a direct conflict with the Social Security Act.

The federal statute in question is ambiguous. As we read the statute, there is no mandate by Congress that a participating state *must* deduct *all* work-related expenses. We think there is merit in the argument that the California Legislature has imposed a statewide *standard* rather than an alleged maximum. This standard, of course, will adversely affect some recipients but will benefit others. It would be naive to assume that work-related expenses, exclusive of child care, never exceed the magic number of $50. However, the amount of the standard is not before this court. Rather, the sole issue before us is whether a statewide standard, such as is set forth in section 11451.6, conforms to federal law. In other words, may the states set up a standard for purposes of administrative ease under the Social Security Act?

With due respect for the opinions of the federal courts, we think such decisions are distinguishable. They were concerned with maximum cut-offs which benefited no one. We must also keep in mind the fact that California has excluded child care expense, a not inconsiderable figure. (4) To reiterate, section 602(a)(7) does not require the states to deduct any and all work-related expenses. The recent interpretation of the act by the Regional Commissioner of HEW supports a statewide standard. (Cf. *Lewis v. Martin* (1970) 397 U.S. 552 [25 L.Ed.2d 561, 567, 90 S.Ct. 1282].) (5) We think the California statute, insofar as it sets a statewide standard exclusive of child care costs, comports to federal law and thus find no invalidity. (Cf. *Jefferson v. Hackney* (1972 406 U.S. 535 [32 L.Ed.2d 285, 92 S.Ct. 1724].)

Having arrived at this conclusion, we do not reach defendants' contentions (1) that the trial court lacked jurisdiction to enjoin them from enforcing section 11451.6 of the Welfare and Institutions Code, (2) that the trial court

violated section 529 of the Code of Civil Procedure when it issued a preliminary injunction without requiring an undertaking, and (3) that the trial court lacked jurisdiction to issue its order requiring defendants to comply with the preliminary injunction pending appeal.

The order granting the preliminary injunction is reversed.

Richardson, P. J., and Coakley, J.,* concurred.

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*Retired Associate Justice of the Court of Appeal sitting under assignment by the Chairman of the Judicial Council.